

FILED ON: 10/7/2009

HOUSE No. 4271

The Commonwealth of Massachusetts

By Mr. Murphy of Burlington, for the committee on Ways and Means, that the Senate Bill relative to pandemic and disaster preparation and response (Senate, No. 2028, amended) ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4271. October 7, 2009.

FOR THE COMMITTEE:

NAME:

Charles A. Murphy

DISTRICT/ADDRESS:

21st Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

The Committee on Ways and Means recommends that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following:

1 “**SECTION 1.** Chapter 17 of the General Laws, as appearing in the 2008 Official Edition, is
2 hereby amended by striking out section 2A and inserting in place thereof the following 2 sections:-

3 Section 2A. Upon declaration by the governor that a public health emergency exists, the
4 commissioner may, during such period of emergency and with approval of the governor, take such action
5 and incur such liabilities as he may consider necessary to assure the maintenance of public health and the
6 prevention of disease. The commissioner may establish procedures to be followed during such
7 emergency to ensure the continuation of essential public health services and the implementation of such
8 services.

9 If the governor declares that a public health emergency is limited to a specified local area, the
10 appropriate local public health authority, as defined in section 1 of chapter 111, may, subject to the
11 approval of the commissioner, take such action during said public health emergency as it may deem
12 necessary to assure the maintenance of public health and the prevention of disease. A local public health
13 authority may, with the approval of the commissioner, establish procedures to be followed during such
14 public health emergency to ensure the continuation of essential public health services and the
15 implementation of such services. Nothing in this section shall supersede the normal operating authority
16 of the local public health authorities, except that such authority shall not be exercised in a manner that

17 conflicts with any procedure or order issued by the commissioner to assure the maintenance of public
18 health and the prevention of disease during such emergency.

19 Upon declaration of a public health emergency, a person owning or controlling real estate or
20 other premises who voluntarily and without compensation grants a license or privilege, or otherwise
21 permits the designation or use of such real estate or premises, in whole or in part, for the purpose of
22 assisting in response to such an emergency, shall not be civilly liable for causing the death of, or injury to,
23 any person on or about such real estate or premises under such license, privilege or other permission or
24 for causing the loss of, or damage to, the property of such person, except in the event of willful, wanton or
25 reckless misconduct. The immunities provided in this subsection shall not apply to any person whose act
26 or omission caused such emergency, in whole or in part, or who would otherwise be liable therefor.

27 A declared public health emergency shall terminate when so declared by the governor or 90 days
28 after its declaration, whichever occurs first. Upon termination of a public health emergency, all powers
29 granted to and exercised by the commissioner and local public health authorities under this section and
30 section 2B shall terminate.

31 Section 2B. (a) As used in this section the following terms shall, unless the context clearly
32 requires otherwise, have the following meanings:-

33 ‘Health care facility’, a non-federal institution, building, agency or portion thereof, whether public or
34 private, for-profit or nonprofit, that is used, operated or designed to provide health services, medical
35 treatment or nursing, rehabilitative or preventive care to any person including, without limitation: adult
36 day-care centers; ambulatory surgical facilities; community health centers; home health agencies;
37 hospices; hospitals; infirmaries; intermediate care facilities; kidney treatment centers; long-term care
38 facilities; medical assistance facilities; mental health centers; outpatient facilities; public health centers;
39 rehabilitation facilities; residential treatment facilities; and skilled nursing facilities; and provided further,
40 that the term ‘health care facility’ shall, without limitation, include, the following related properties when

used for, or in connection with, the foregoing: alternate care sites; health personnel training and lodging facilities; laboratories; laundry facilities; offices and office buildings for persons engaged in health care professions or services; patient, guest and health personnel food service facilities; pharmacies; and research facilities.

‘Health care professional’, shall include, without limitation: a dentist; emergency medical technician; laboratory technician; licensed practical nurse; nurse practitioner; paramedic; pharmacist; pharmacy technician; physician; physician assistant; psychologist; registered nurse; or social worker.

‘Local public health authority’, any body politic or political subdivision of the commonwealth that acts as a board of health, public health commission or health department for a city or town and includes any board of health and any regional board of health or regional health district as defined in section 27B of chapter 111.

(b) Upon declaration of a public health emergency pursuant to section 2A, the commissioner or a local public health authority acting at the direction of the commissioner may: (1) close, direct and compel the evacuation of, or decontaminate or cause to be decontaminated any public building or facility, and allow the reopening of the public building or facility when the danger has ended; (2) require a health care facility to provide services or the use of its facility, or to transfer the management and supervision of the health care facility to the department; (3) control ingress to and egress from any stricken or threatened public area, and the movement of persons and materials within that area; (4) adopt and enforce measures to provide for the safe disposal of infectious waste; (5) procure, store or distribute any anti-toxins, serums, vaccines, immunizing agents, antibiotics or other pharmaceutical agents or medical supplies as may be necessary to respond to the emergency; (6) waive, for a period of 30 days or until the declaration of a public health emergency pursuant to section 2A has terminated, whichever occurs first, licensing requirements for health care professionals with a valid license from another jurisdiction in the United States or whose professional training would otherwise qualify them for an appropriate professional

license in the commonwealth; (7) allow for the dispensing of controlled substances by appropriate personnel consistent with federal statutes as necessary for the prevention or treatment of illness; (8) authorize the chief medical examiner to appoint and prescribe the duties of emergency assistant medical examiners as may be required for the proper performance of the duties of the office; (9) care for any emerging mental health or crisis counseling needs that individuals may exhibit, with the consent of the individuals; and (10) request the assistance of the Massachusetts emergency management agency.

If the commissioner determines, based on an annual review, that within the city of Boston, the local public health authority has adequate and appropriate resources to exercise authority relative to clause (2), said local public health authority may exercise authority relative to said clause (2) during a public health emergency declared pursuant to section 2A, after notifying the commissioner, unless such action is deemed by the commissioner, after consultation with the local public health authority, to be contrary to the interests of the commonwealth.

Any person who knowingly violates an order of the commissioner or a local public health authority acting at the direction of the commissioner, issued pursuant to this subsection shall be punished by imprisonment in the house of corrections for not more than 6 months, or by a fine of not more than \$1,000, or both.

(c) All political subdivisions of the commonwealth responding to a public health emergency declared pursuant to section 2A shall consult with each other and shall cooperate with the commissioner in: (1) the exercise of their powers over routes of transportation, materials and facilities including, but not limited to, communication devices, carriers, public utilities, fuels, food, clothing and shelter; and (2) informing the public relative to protecting themselves during the emergency and its aftermath and informing them of actions being taken to control the emergency; provided, however, that reasonable efforts shall be made to provide such information in the primary language of the recipients of the

information as well as in English; and provided further, that reasonable efforts shall be made to provide such information in a manner accessible to individuals with disabilities.

(d) All political subdivisions of the commonwealth engaged in responding to a public health emergency may share and disclose information to the extent necessary for the treatment, control and investigation of an emergency.

SECTION 2. Section 1 of chapter 111 of the General Laws, as so appearing, is hereby amended by inserting after the definition of ‘Inland waters’ the following definition:-

‘Local public health authority’, any body politic or political subdivision of the commonwealth that acts as a board of health, public health commission or health department for a city or town and includes any board of health and any regional board of health or regional health district as defined in section 27B.

SECTION 3. Section 5 of said chapter 111, as so appearing, is hereby amended by inserting after the word ‘disease’, in line 4, the following words:- and adverse health conditions.

SECTION 4. Section 5A of said chapter 111, as so appearing, is hereby amended by inserting after the word ‘vaccine’, in line 3, the following words:- immunizing agents, antibiotics and other pharmaceutical or medical supplies.

SECTION 5. Section 6 of said chapter 111, as so appearing, is hereby amended by inserting after the word ‘the’, in line 1, the first time it appears, the following:- (a).

SECTION 6. Section 6 of said chapter 111, as so appearing, is hereby amended by inserting after the word ‘diseases’, in lines 2 and 4, each time it appears, the following words:- , injuries and threats to health.

SECTION 7. Said section 6 of said chapter 111, as so appearing, is hereby further amended by inserting after subsection (a) the following 4 subsections:-

(b) The department shall specify the responsibilities of health care providers, medical examiners, and others to report, to the department or to a local public health authority, diseases, injuries and threats to health specified by the department. The department shall specify the responsibilities of local public health authorities to report diseases, injuries and threats to health to the department. The department may specify the responsibilities of pharmacists to report to the department unusual or increased prescription rates, unusual types of prescriptions or unusual trends in pharmacy visits that may indicate a threat to public health. Nothing in this section shall preempt the authority of a local public health authority to require direct reporting of diseases, injuries and threats to health to the local public health authority.

(c) Whenever the department or a local public health authority learns of a case of a reportable disease, an unusual cluster or a suspicious event that it reasonably believes may have been caused by a criminal act or that may result in a public health emergency under section 2A of chapter 17 or a state of emergency pursuant to chapter 639 of the acts of 1950 it shall immediately notify the appropriate federal, state and local public safety authorities. Sharing of such information pursuant to this section shall be restricted to that necessary for treatment and control of illness, investigation of the incident and prevention or control of the emergency.

(d) No person making a report under this section shall be liable in any civil or criminal action by reason of such report if it was made in good faith.

(e) Any person required to report who fails to file a report required by this section shall be subject to a fine of not more than \$1,000. An individual health care provider shall be subject to suspension or revocation of his license or certification if the failure to file a report is gross, wanton or willful misconduct and poses a serious risk to the public health.

SECTION 8. Section 7 of said chapter 111, as so appearing, is hereby amended by adding the following paragraph:-

The department may obtain, upon request, medical records and other information that the department considers necessary to carry out its responsibilities to investigate, monitor, prevent and control disease or conditions dangerous to the public health. All medical records shall be kept confidential and only those individuals who have a specific need to review such information shall be entitled to access to such information. Whoever violates this section shall be punished by a fine of not more than \$1,000.

SECTION 9. Said chapter 111 is hereby further amended by inserting after section 25O the following section:-

Section 25P. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

‘System’, the Massachusetts system for advance registration.

(b) The department shall establish a registry of volunteer personnel who are available to provide services including, but not limited to, health and medical services. The registry shall be known as the Massachusetts system for advance registration. The department may establish requirements for registration including, but not limited to, the successful completion of certain training as determined by the department.

(c) The department shall establish a process to identify personnel in the system, which may include a requirement for photographic identification.

(d) The commissioner may activate the system:

(1) during a public health emergency declared by the governor pursuant to section 2A of chapter 17;

(2) during a state of emergency declared by the governor pursuant to chapter 639 of the acts of 1950;

(3) during a public health incident that demands an urgent response;

(4) pursuant to a request from a local public health authority when local resources have been or are expected to be exhausted during a public health incident that demands an urgent response; or

(5) pursuant to an official request from another state or from a province of Canada.

The location of assignment for duty may be within the commonwealth, or may be in another state or a province of Canada if an official request for assistance has been received from such state or province.

(e) If the situation within the commonwealth for which the system is activated requires either staffing levels or expertise of personnel that are beyond the capacity of the system to provide, the commissioner may request personnel from other states having similar personnel registries. Under such circumstances, when acting as authorized personnel in the commonwealth, out-of-state personnel shall receive the protections provided under subsection (h) to members of the system. This subsection shall not apply to, or affect a deployment under, chapter 339 of the acts of 2000 or under section 58 of chapter 300 of the acts of 2002.

(f) Any mobile assets and response resources of the national disaster medical system in the commonwealth may be activated for duty when they are not formally activated in federal service, by the commissioner under the circumstances provided under clauses (1) to (4), inclusive of subsection (d). When so activated, individuals who are members of the national disaster medical system shall receive the protections provided in subsection (h) to members of the Massachusetts system for advance registration.

(g) Any Massachusetts medical reserve corps, established pursuant to section 300hh-15 of chapter 42 of the United States Code, may be activated for duty under the circumstances stated in clauses (1) to (4), inclusive of said subsection (d) and when such activation is requested by the governor and authorized

by the medical reserve corps' authorization mechanisms, members of such corps shall receive the protections provided in subsection (h) to members of the system.

(h) In the absence of any other protections provided by law, whenever activated for duty pursuant to this section, a member of the system shall not be liable in a suit for damages as a result of good-faith acts or omissions while engaged in the performance of his duties as a volunteer pursuant to this section; provided, however, that this subsection shall not apply in the case of willful, wanton or reckless actions by a member of the system occurring during the performance of the member's duties.

(i) The department of public health may adopt rules and regulations to implement this section.

SECTION 10. Section 94A of said chapter 111 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out subsection (d) and inserting in place thereof the following subsection:-

(d) Upon order of the commissioner or his agent or at the request of a local public health authority pursuant to such order, law enforcement authorities shall assist emergency medical technicians or other appropriate medical personnel in the transportation of such person to the tuberculosis treatment center. No law enforcement authority or medical personnel shall be held criminally or civilly liable as a result of an act or omission carried out in good faith in reliance on such order.

SECTION 11. Said chapter 111 is hereby further amended by striking out section 95, as so appearing, and inserting in place thereof the following section:-

Section 95. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:-

'Isolation', separation for the period of communicability of infected individuals or animals from other individuals or animals in such places and under such conditions as will prevent the direct or indirect

transmission of an infectious agent to susceptible people or to other individuals or animals who may spread the agent to others.

‘Quarantine’, restricting the freedom of movement of well individuals or domestic animals that have been exposed to a communicable disease for a period of time relating to the usual incubation period of the disease in order to prevent effective contact with those not so exposed.

(b) Whenever the commissioner, or a local public health authority within its jurisdiction, determines that there is reasonable cause to believe that a disease or condition dangerous to the public health exists or may exist or that there is an immediate risk of an outbreak of such a disease or condition and that certain measures are necessary to decrease or eliminate the risk to public health, the commissioner or local public health authority may issue an order of isolation or quarantine to an individual or a group of individuals; provided, however, that, as used in this section, a disease or condition dangerous to the public health shall not include acquired immune deficiency syndrome, AIDS, or the human immunodeficiency virus, HIV. The order may be an oral order in exigent circumstances and, in such case, it shall be followed by a written order as soon as reasonably possible. The written order shall be delivered personally to the individual subject to the order, but if that is not possible, shall be delivered in a manner that is reasonably calculated to notify the individual or group that the order has been issued. In the case of a group, delivery may include delivery through the mass media and posting in a place where group members are reasonably likely to see it. If the commissioner determines that non-compliance would pose a serious danger to public health, the written order shall state that non-compliance would pose such a danger.

(c) Isolation and quarantine orders shall utilize the least restrictive means necessary to prevent a serious danger to public health and may include, but shall not be limited to, restricting a person from being present in certain places including, but not limited to, school or work; confinement to private homes; confinement to other private or public premises; or isolation or quarantine of an area.

(d) It shall be a violation of section 4 of chapter 151B for an employer to discharge or reduce any benefits of an employee because such employee is subject to an order of isolation or quarantine or because a child under 15 years of age of whom the wage earner has custody and responsibility is subject to an order of isolation or quarantine.

(e) The individual or group subject to an order of isolation or quarantine shall be informed that the order may be appealed by filing a petition in superior court challenging the order at any time. If an individual fails to comply with the order within the time specified in the order, the commissioner or the local public health authority may apply to a judge of the superior court for an order requiring the individual to comply with the order within the time specified in the order of the court and to take whatever other action the court considers appropriate in the circumstances to protect the public health. The law enforcement authorities of the city or town where the individual is present shall enforce the court order.

(f) This section shall not affect the authority of the department to isolate or quarantine individuals with active tuberculosis pursuant to the requirements and procedures specified in sections 94A to 94H, inclusive, and regulations promulgated thereunder.

SECTION 12. Section 96A of said chapter 111, as so appearing, is hereby amended by striking out, in lines 5 and 6, the words ‘except under section ninety-six’.

SECTION 13. Section 12C of chapter 112 of the General Laws, as so appearing, is hereby amended by inserting after the word ‘programs’, in line 2, the second time it appears, the following words:- , and no other person assisting in the foregoing,.

SECTION 14. Said section 12C of said chapter 112, as so appearing, is hereby further amended by adding the following sentence:- This section shall not apply in the case of willful, wanton or reckless actions.

SECTION 15. Section 12V of said chapter 112, as so appearing, is hereby amended by striking out, in line 1, the words ‘, whose usual and regular duties do not include the provision of emergency medical care, and’.

SECTION 16. Section 13 of chapter 122 of the General Laws, as so appearing, is hereby amended by striking out, in line 6, the words ‘, and it shall have the same authority to remove such person thereto as is conferred upon boards of health by section ninety-five of chapter one hundred and eleven’.

SECTION 17. Chapter 175 of the General Laws is hereby amended by inserting after section 24F the following section:-

Section 24G. (a) Any policy, contract, agreement, plan or certificate of insurance for coverage of health care services, including any sickness, health or welfare plan issued within or without the commonwealth, including, but not limited to, those of a carrier as defined in section 1 of chapter 176O, or other state approved health plans, shall provide that in the event of a declaration of a public health emergency declared pursuant to section 2A of chapter 17 or state of emergency declared pursuant to chapter 639 of the acts of 1950, which necessitates a suspension of all elective procedures, there shall be a waiver of administrative requirements within the zone of that suspension of elective procedures including, but not limited to, utilization review, prior authorization, advance notification upon admission or delivery of services and limitation on provider networks for treating or transferring patients. During such declared public health emergency or state of emergency, all prompt claims payment requirements, including the payment of interest for late processing, shall be waived for services rendered during any such emergency. The division of insurance shall promulgate regulations regarding the waiver of administrative requirements and claims payment requirements during a public health emergency.

(b) Upon the end of the public health emergency or state of emergency, there shall be within 180 days a reconciliation of charges and reimbursements, during which time claims may be adjusted or re-adjudicated based on the provisions of any contract between the provider and health carrier, except that

such reimbursement shall not be conditioned on the execution during the public health emergency or state of emergency of utilization review, pre-notification or pre-authorization requirements. In the event that there is no contract between the provider and health carrier, reconciliation shall be based on reimbursement amounts equal to the carrier's usual and customary reimbursement rates in force at the date of service, except that for services provided to MassHealth members, reconciliation shall be based on reimbursement amounts equal to the MassHealth reimbursement rates in force on the date of service. Upon completion of the reconciliation, any carrier overpayments shall be reimbursed by the provider to the carrier and any underpayments shall be paid by the carrier to the provider. Investigations of fraud and resultant recovery actions shall not be subject to the reconciliation period, but shall be initiated within 3 years after the date of the declared end of the public health emergency or state of emergency.

(c) A health care insurer shall include the provisions of subsections (a) and (b) in all contracts between the insurer and a health care provider.

SECTION 18. Chapter 268 of the General Laws is hereby amended by inserting after section 33A the following section:-

Section 33B. Whoever falsely makes, forges, counterfeits, alters or tampers with an identification card or other insignia issued by or under the authority of the commonwealth or by or under the authority of a Massachusetts medical reserve corps or a Massachusetts disaster medical assistance team established pursuant to federal law or whoever, with intent to defraud, uses or possesses any such identification card or insignia or impersonates or falsely represents himself to be or not to be a person to whom such identification card or insignia has been duly issued or whoever willfully allows another person to have or use any such identification card or insignia issued for his use alone shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both such fine and imprisonment.

SECTION 19. Notwithstanding any general or special law to the contrary, a health care provider, as defined in section 1 of chapter 111 of the General Laws, and a provider, as defined in section 1 of chapter

118G of the General Laws, shall not be liable in a suit for damages or subject to administrative or licensing sanctions as a result of good-faith acts or omissions while engaged in the performance of duties as a volunteer participating in a preparedness program sanctioned by a state agency, as defined in section 1 of chapter 6A of the General Laws, or by a local public health authority, as defined in said section 1 of said chapter 111, or as an employee in rendering emergency care, treatment, advice or assistance in direct response to a declared public health emergency under section 2A of chapter 17 of the General Laws or a declared state of emergency under chapter 639 of the acts of 1950. This section shall not apply in the case of willful, wanton or reckless actions by a provider occurring in the performance of the provider's duties during such emergency.

SECTION 20. Notwithstanding any general or special law to the contrary, the department of public health shall convene a panel of public health preparedness experts to assess current funding resources available for preparedness activities in the commonwealth and to examine what funding will be needed to sustain state and local preparedness activities. The panel, which shall include representatives from hospitals, local public health authorities and other health and medical providers, shall convene within 30 days of the effective date of this act and report to the joint committee on public health, the joint committee on health care financing and the house and senate committees on ways and means within 9 months of the effective date of this act.

SECTION 21. Sections 92, 93, 94, 96, 97, 105, 110, 110B and 113 of chapter 111 of the General Laws are hereby repealed.

SECTION 22. Subsection (c) of section 24G of chapter 175 of the General Laws shall apply to all contracts between the insurer and a health care provider entered into, renewed or amended on or after the effective date of this act.”; and by striking out the title and inserting in place thereof the following title: “An Act relative to public health emergency preparation and response in the Commonwealth.”.